STATE OF MICHIGAN

COURT OF APPEALS

HOLLY ROAD MEDICAL ASSOCIATES, P.C., Plaintiff/Counter-Defendant-Appellant,	UNPUBLISHED June 13, 2006
v	No. 259173 Genesee Circuit Court
EROL UCER and AYSEL UCER, Defendants/Counter-Plaintiffs-Appellees.	LC No. 04-078300-CH

Before: Whitbeck, C.J., and Zahra and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging the trial court's order granting summary disposition in favor of defendants in this breach of contract and declaratory judgment action. Because plaintiff failed to comply with the requirements of the lease agreement and because defendants are not equitably estopped from taking issue with plaintiff's choice of appraisers, summary disposition was proper, and we affirm.

Defendants leased office space located at 8401 Holly Road in Grand Blanc, Michigan to plaintiff on June 15, 1998. The parties' lease agreement specifies a five-year term with an option to extend the lease for two additional two-year periods. It also contains an option to purchase found at § 20.01, which provides in pertinent part:

> Upon expiration of the original five (5) year term of the Lease, and during either option period . . . Tenant has the option to purchase the Leased Premises upon the following terms:
>
> a) Tenant shall provide Landlord with one hundred eighty (180) days' advance written notice prior to the termination of the original Lease term or during either option period that Tenant elects to exercise this option . . . .
>
> b) Within fifteen (15) days of Landlord's receipt of Tenant's notice, each party shall contract with a reputable real estate appraiser, having MAI [Member of the Appraisal Institute] or the then-equivalent designation, to ascertain the then-fair market value of

the Leased Premises. Each party shall be solely responsible for the costs of their respective appraisals.

c) Upon completion of each appraisal, each party shall promptly submit a copy of its appraiser's entire report and conclusion to the other party.

* * *

f) Tenant's failure to exercise this option to purchase at the time and in the manner stated in this paragraph shall result in the immediate expiration of such option.

Pursuant to the lease agreement, before the expiration of the initial five-year term, plaintiff notified defendants that it intended to exercise the option to purchase. Defendants acknowledged plaintiff's intent to purchase the leased premises in a written response. Both parties retained real estate appraisers pursuant to § 20.01(b). It is undisputed that, despite plaintiff's initial representation to the contrary, plaintiff's appraiser, Kevin Groves, was not an MAI, i.e., a Member of the Appraisal Institute. Plaintiff filed the instant action to compel the sale of the property, and defendants counterclaimed in part on the basis that Groves is not an MAI or an equivalent designation as required under § 20.01(b). Defendants sought a declaratory judgment that plaintiff was in default under the lease and that defendants were entitled to possession of the premises.

On appeal, plaintiff contends that the trial court erred by granting summary disposition for defendants because plaintiff exercised the option to purchase in strict conformity with the terms of the lease agreement. Plaintiff also argues that a genuine issue of material fact exists regarding whether Groves's designation as a member of the National Association of Independent Fee Appraisers (IFAS) is equivalent to an MIA, as specified in the lease agreement. This Court reviews de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if no factual dispute exists, thus entitling the moving party to judgment as a matter of law. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 31; 651 NW2d 188 (2002). In deciding a motion under subrule (C)(10), a court considers all the evidence, affidavits, pleadings, and admissions in the light most favorable to the nonmoving party. *Id*. at 30-31. The nonmoving party must present more than mere allegations to establish a genuine issue of material fact for resolution at trial. *Id*. at 31. To survive a motion for summary disposition, the opposing party must present documentary evidence establishing the existence of a genuine issue of material fact for resolution at trial. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

In addition, the proper interpretation of a contract is a question of law which this Court reviews de novo. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003). In interpreting a contract, our obligation is to determine the intent of the parties. *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003). We must examine the language of a contract and accord words their ordinary and plain meanings if such meanings are apparent. *Wilkie*, *supra* at 47. If the language is unambiguous, courts must interpret and enforce the contract as written. *Quality Products*, *supra* at 375.

A party must strictly comply with the terms of an option contract in order to exercise the option. *LeBaron Homes, Inc v Pontiac Housing Fund, Inc*, 319 Mich 310, 313; 29 NW2d 704 (1947); see also *Oshtemo Twp v City of Kalamazoo*, 77 Mich App 33, 37-38; 257 NW2d 260 (1977). Our Supreme Court has stated:

> An option is not a contract of purchase, it is simply a contract by which the owner of the property agrees with another that he shall have a right to buy the property at a fixed price within a specified time. An option is but an offer, strict compliance with the terms of which is required; acceptance must be in compliance with the terms proposed by the option both as to the exact thing offered and within the time specified; otherwise the right is lost. [*LeBaron Homes, supra*, quoting *Bailey v Grover*, 237 Mich 548, 554; 213 NW 137 (1927) (citation omitted).]

Further, "[a]n option may ripen into a binding bilateral contract of purchase and sale by a seasonal exercise of the option and compliance with its terms by the optionee." *LeBaron Homes, supra* at 315. "An option becomes vested when the conditions and procedures specified in the contract are complied with in such a manner as to give the lessee an immediate right to exercise the option . . . ." *Amoco Oil Co v Kraft*, 89 Mich App 270, 275 n 3; 280 NW2d 505 (1979). The holder of an option seeking specific performance has the burden of showing compliance with its terms. *LeBaron Homes, supra* at 315.

Plaintiff argues that it exercised the option to purchase by providing 180 days' notice of its intent to exercise the option and that this condition was the only requirement to a valid exercise of the option. Specifically, plaintiff contends that its notice constituted an acceptance of defendants' offer to sell and transformed the contract into a contract for sale. However, the plain language of the lease agreement belies plaintiff's contention that providing 180 days' notice is the only condition precedent to a valid exercise of the option. Although the lease agreement contains the notice condition, it also contains other conditions, including the requirement that each party retain an MAI, or the "then-equivalent," to ascertain the fair market value of the premises and that each party submit a copy of its appraisal to the other party. And, if the lower appraisal is within ten percent of the higher appraisal, the lease agreement specifies that plaintiff, at its option, could purchase the property for the average of the two appraisals by notifying defendants of its intent to purchase within fifteen days after receiving defendants' appraisal. Also, if the lower appraisal is not within ten percent of the higher appraisal, the lease agreement specifies a procedure to be followed for determining the sale price, including the retention of a third appraiser. Plaintiff's argument that providing 180 days' notice of its intent to exercise the option was all that was necessary to exercise the option fails.

Plaintiff also argues that the trial court erred by making a factual finding that plaintiff did not comply with the terms of the option because Groves is not MAI certified. The lease agreement requires the parties to "contract with a reputable real estate appraiser, having MAI or the then-equivalent designation, to ascertain the then-fair market value of the Leased Premises." At issue is the meaning of the phrase "then-equivalent designation." Plaintiff asserts that a genuine issue of material fact exists regarding whether Groves is the "then-equivalent" of an MAI. The doctrine of *noscitur a sociis* requires that a term be interpreted in light of the words surrounding it. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 318; 645 NW2d 34 (2002).

Noscitur a sociis "stands for the principle that a word or phrase is given meaning by its context or setting." *Id.* (citations omitted).

Here, under the doctrine of *noscitur a sociis*, the meaning of the term "then-equivalent designation" is aided by looking to the term "then-fair market value" in the same sentence. The latter term clearly refers to the fair market value of the premises at the time that the option is exercised. Thus, the word "then" modifies the phrase "fair market value" and limits this term to the fair market value existent at the time that the option is exercised. Likewise, the word "then" modifies the term "equivalent designation" in the phrase "having MAI or the then-equivalent designation." This language shows that the parties anticipated that the MAI could possibly be replaced with a different designation by the time that the option was exercised. The word "then" thus refers to the designation in existence, either MAI or its replacement designation, at that time. Because the Appraisal Institute had not replaced the MAI designation with a different designation, there existed no "then-equivalent designation" to otherwise satisfy the contractual language.

In other words, under the doctrine of *noscitur a sociis* the word "then" had temporal implications. This interpretation is consistent with the dictionary definition of "then." A court may refer to dictionary definitions to ascertain the precise meaning of a term. *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 262; 617 NW2d 777 (2000). *Random House Webster's College Dictionary* (2001) defines "then" as "at that time." Thus, the plain meaning of the word indicates a temporal connotation.[1]

Since it is undisputed that Groves is not an MAI and that the Appraisal Institute had not replaced the MAI designation, plaintiff failed to comply with the condition set forth in § 20.01(b) of the lease agreement and, as a result, the option to purchase expired under § 20.01(f) of the agreement. Section § 20.01(f) specifically provides that plaintiff's "failure to exercise this option to purchase at the time and *in the manner* stated in this paragraph shall result in the immediate expiration of such option." (Emphasis added.) Because plaintiff failed to abide by the contract terms, the lease agreement did not ripen into a binding bilateral contract for the purchase and sale of the premises, in accordance with § 20.01(f). *LeBaron Homes, supra* at 315. Plaintiff's argument that rescission was not appropriate because any breach of the lease agreement was not material is misplaced. The lease agreement was not rescinded. Rather, the option expired under the terms set forth in § 20.01(f).

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[1] The trial court granted summary disposition for defendants, merely stating that Groves does not have the equivalent designation to an MAI. It appears from the trial court's ruling that the court made a factual finding that Groves, as an IFAS, was not the equivalent of an MAI rather than interpreting the term "then-equivalent designation." To the extent that the trial court engaged in a factual determination, it erred. Because the court reached the correct result, however, we decline to reverse. *Tipton v William Beaumont Hosp*, 266 Mich App 27, 37-38; 697 NW2d 552 (2005).

Plaintiff further argues that defendants are equitably estopped from taking issue with plaintiff's retention of Groves as its appraiser because defendants failed to object to plaintiff's retention of Groves until after the parties had exchanged appraisals.

> Equitable estoppel may arise where (1) a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts, (2) the other party justifiably relies and acts on that belief, and (3) the other party is prejudiced if the first party is allowed to deny the existence of those facts. [*Lakeside Oakland Dev, LC v H & J Beef Co*, 249 Mich App 517, 527; 644 NW2d 765 (2002), quoting *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 140-141; 602 NW2d 390 (1999).]

Plaintiff fails to acknowledge that plaintiff itself erroneously identified Groves as "Kevin Groves, MAI" in a letter dated August 28, 2003. Although plaintiff assumes that defendants were aware that Groves is not actually an MAI, it fails to present any evidence indicating that is the case. It is possible that defendants were unaware that Groves was not an MAI until after they had received his appraisal. Indeed, as plaintiff argues, defendants did not object to plaintiff's retention of Groves until after receiving Groves's appraisal. But, plaintiff, rather than defendants, was obligated to ascertain whether Groves was an MAI and failed to do so. A party's failure to use reasonable diligence to ascertain facts does not equitably estop the opposing party. See *American Trust Co v Bergstein*, 246 Mich 527, 532; 224 NW 327 (1929).

Affirmed.

/s/ William C. Whitbeck
/s/ Brian K. Zahra
/s/ Pat M. Donofrio